

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION

BLEC, LLC,

Plaintiff,

v.

Case No.: 3:12-cv-00223

VIVACITYLIFE, LLC,  
SERVE: 51 US Route 1, Suite I  
Scarborough, Maine, 04074

Defendant.

CONSENT JUDGMENT

As a result of settlement of this action by virtue of a settlement agreement between the parties ("Settlement Agreement"), Plaintiff, BLEC, LLC ("BLEC") and Vivacitylife, LLC ("Vivacitylife"), have agreed to resolve this dispute through entry of this Consent Judgment:

NOW, THEREFORE, upon the consent of the parties hereto, it is hereby ORDERED, ADJUDGED, and DECREED that:

1. LOEC, Inc. has acquired the assets of BLEC and Lorillard Technologies, Inc. ("LTI") has succeeded to BLEC's interests in the BLU™ Family of Trademarks (defined below);

2. LTI owns U.S. Registration No. 3,846,035 for BLU ECIGS®, and all right, title, and interest in and to Trademark Application Serial Number 85/092,665 for the word mark BLU CIGS™, Trademark Application Serial Number 85/131,287 for the word mark BLU™, Trademark Application Serial Number 85/131,965 for the word and design mark BLU™ (collectively "Applications"), and BLU Trade Dress that includes, but is not limited to a blue

colored LED tip that lights up when a user takes a drag off of the electronic cigarette ("BLU™ Trade Dress") for electronic cigarettes (collectively referred to as the "BLU™ Family of Trademarks").

3. BLEC commenced this action for trademark infringement, trade dress infringement, unfair competition, trademark dilution, trade dress dilution, trademark misappropriation, trade dress misappropriation of the BLU™ Family of Trademarks, and violation of N.C. Gen. Stat. § 75-1.1.

4. Vivacitylife has received and reviewed a copy of the Complaint filed by BLEC in this action, and its counsel executed a Waiver of the Service of Summons form on May 7, 2012.

5. This Court has jurisdiction over the parties to this action and over the subject matter of the Complaint.

6. LTI is the sole and exclusive owner of the BLU™ Family of Trademarks, and has the right to sue upon, and recover damages for past infringement, and enjoin future infringement of the BLU™ Family of Trademarks.

7. The BLU™ Family of Trademarks are valid and enforceable.

8. Vivacitylife, and all other persons or entities in active concert or participation with Vivacitylife or acting on its behalf should be and are hereby permanently enjoined from using the AMERICAN BLUE TIP mark, a blue LED, and/or any other confusingly similar mark or device in the sale, offering for sale, distribution or advertising of electronic cigarettes or similar merchandise at any locality in the United States, or otherwise infringing the BLU™ Family of Trademarks.

9. The Settlement Agreement resolves all claims in this action. Accordingly, BLEC's claims against Vivacitylife, as set forth in Counts I-XI in the Complaint, are hereby dismissed with prejudice.

10. This Court shall retain jurisdiction over this case for purposes of enforcing the Consent Judgment and the Settlement Agreement between the parties pursuant to which the Consent Judgment is filed, *for a period of twenty-four (24) months* <sup>long</sup>

11. The right to enforce this Consent Judgment shall transfer to any successor-in-interest to BLEC.

12. Each party shall bear its own costs and attorneys' fees.

SO ORDERED

Dated: *25 July 12*

*Graham C. Miller*  
United States District Judge

HAVE SEEN and AGREED:

Dated: \_\_\_\_\_

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